

2004

# State of Utah v. Bernadette Duran : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,	:	
	:	
Plaintiff Appellant,	:	Appellate Court No.
	:	20040421-CA
vs.	:	
	:	Criminal No.
Bernadette Duran ,	:	031700152
	:	
	:	
Defendant Appellee,	:	
	:	
	:	
	:	

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BRIEF OF APPELLANT

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APPEAL FROM RULING DENYING SUPPRESSION OF EVIDENCE  
IN THE SEVENTH JUDICIAL DISTRICT COURT  
THE HONORABLE BRYCE K. BRYNER, DISTRICT JUDGE

---

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Defendant Appellant is presently incarcerated in the Utah State Prison.

A PUBLISHED DECISION IS REQUESTED BY APPELLANT

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,	:	
	:	
Plaintiff Appellant,	:	Appellate Court No.
	:	20040421-CA
vs.	:	
	:	Criminal No.
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### JURISDICTION OF THE UTAH COURT OF APPEALS

Appellant, Bernadette Duran, timely filed notice of appeal on May 18, 2004, from the May 03, 2004, Ruling on Motions to suppress.

Jurisdiction is proper pursuant to section 78-2a-2(e) of the Utah Code.

## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

### **I. Invalid Consent**

The Trial Court committed reversible error when it failed to suppress the evidence obtained from the warrantless search of Mr. Horvath's residence.

#### **Standard of review:**

A challenge of a trial court's determination of valid consent is a question of law reviewed for correctness. *State v. Harmon*, 910 P.2d 1196, 1199 (Utah 1995).

**Issue Preserved:** R. 8, 12 at pg 6-8.

## **DETERMINATIVE STATUTES, RULES AND CONSTITUTIONAL PROVISIONS**

### **1. Fourth amendment of the United States Constitution.**

#### **Amendment IV**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution. Amend. IV.

### **2. Article I section 14 of the Utah Constitution.**

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized

UT. Const. art. I § 14.

## **STATEMENT OF THE CASE**

### **Nature of the Case:**

Defendant comes before the Court of Appeals on direct appeal from a ruling on motion to suppress, in the Seventh Judicial District Court of Carbon County, State of Utah.

### **Course of Proceedings:**

On May 3, 2004, the Trial Court entered its rulings on motions to suppress denying defendant's motion to suppress evidence obtained through a warrantless search and entry of a friend's residence. R. 34.

### **Disposition:**

The Trial Court held that a landlord's consent to search the property of a tenant was valid as it was viewed through the eyes of the police officers. R. 36. The Court did not consider whether exigent circumstances justified the warrantless entry. R. 37. The state conceded that the Defendant had standing to contest the warrantless entry. R. 36.

Ms. Duran was sentenced by Judge Bryce K. Bryner pursuant to her conditional plea to serve a term of one to fifteen years in the Utah State Prison on Count I and six months in the Carbon County Jail on Count II to be served concurrently with any other convictions for which Ms. Duran was presently serving. R. 55.

**Statement of Facts:**

On April 22, 2003, Eddie Horvath and his mother, Mrs. Horvath, contacted the Carbon County Drug Task Force. R. 76-7. Eddie Horvath informed the Task Force that he had witnessed marijuana being smoked in Lance Horvath's trailer residence. R. 77. Eddie Horvath asked the Task Force to be careful and told them that he believed there were guns in the trailer. *Id.* Mrs. Horvath explained to the officers that the trailer in which her son Lance was residing belonged to her. *Id.* Mrs. Horvath showed the officers her title to the trailer and gave her consent to search the trailer and remove its occupants. R. 107. Officer Anderson and Sargent Barnes were present that day. R. 76 They testified they were aware that Lance Horvath was, and had been using the trailer as his residence. R. 78, 97, 107-8. Lance Horvath had, prior to April 22, 2003, lived in, used and rented the trailer as his residence for approximately ten years. R. 129.

The officers did not inquire whether Mrs. Horvath could enter or access the trailer at will. They did not ask how frequently she visited or stayed in the residence. They did not ask if Lance had signed a rental agreement. The officers did not ask if she had any common authority in the trailer home. R. 78, 106. They were told by Eddie and Mrs. Horvath that Lance was not in his residence. R. 79. Sargent Barnes testified that they believed no one in the trailer would have standing to contest a



warrantless search. *Id.* Furthermore he testified that he preferred warrantless searches because obtaining of a warrant was too much work. R. 94. He testified that the only probable cause that the Drug Task force had for searching the home was that they believed there were drugs being smoked in the home. R. 96.

Upon entering and searching the trailer the officers seized numerous drugs, related items and several weapons. R.89, 90, 104. They detained and arrested the Defendant, Bernadette Duran, and two other occupants. R. 82-5.

Bernadette Duran testified that she had spent the night at the trailer home on at least two occasions, April 22, 2003, the day of the warrantless search, and once, a couple months earlier. R. 119, 128. She visited Lance Horvath in his trailer home daily and would come and go as she pleased while Lance was home. R. 119-20. She was given the keys to the residence when Lance was not at the residence. R. 120 Ms. Duran testified that she kept or stored several boxes of her baseball cards at the trailer home. R. 119. She felt comfortable and safe in the residence and would move about the trailer as she pleased. R. 120.

#### **SUMMARY OF APPELLANT'S ARGUMENTS**

The Trial Court incorrectly held that obtaining written consent from a landlord who provided proof of ownership justified a warrantless entry into the rental residence of another.

## ARGUMENT

**Whether a showing of common authority requires more than a showing of a landlord's ownership of a tenant's residence.**

Consent to search the property of another by a third person requires that the State persuasively show that the person giving consent had shared use and joint access or control over the premises. *State v. Davis*, 965 P.2d 525, 532-33 (Utah Ct. App. 1998). As cited by the Trial Court in its ruling denying Defendant's motion to suppress, the United States Supreme Court held in *Illinois v. Rodriguez*, that "common authority is defined through the eyes of the police at the time of entry." R. 34, *Illinois Rodriguez*, 497 U.S. 177, 186 (U.S. 1990). However, as the Utah Supreme Court held three years after the *Rodriguez*, decision "it is the right of possession rather than the right of ownership which ordinarily determines who may consent to a police search of a particular place." *State v. Brown*, 853, P.2d 851, 855 (Utah 1993). Furthermore, in Utah, when police officers are faced with an ambiguous situation, "if the agents do not learn enough, . . . [about] whether the property about to be searched is subject to mutual use by the person giving consent, then the warrantless entry is unlawful without further inquiry." *State v. Elder*, 965 P.2d 525, 533 (Utah Ct. App. 1998).

In this case, police officers were informed by the owner of

the rental unit/trailer, that she was its owner and that she wanted the officers to remove the people inside. R. 103 The officers testified that at the time they obtained consent to search the rental unit, that at a minimum, they knew that the owner's son Lance had been staying there for at least ten days. R. 37 They knew that the owner, Mrs. Horvath, was not staying in the rental unit but in a house completely separate from the unit. R. 108 Furthermore, Sargent Barnes, the lead officer, testified that "all of his information, all of his knowledge, all of his - - everything with respect to the trailer and Lance, was that was where he resided."

Despite knowing this information, the officer obtaining consent from the landlord did not ask her if she had mutual access to the rental unit. R. 78, 106. He did not ask of her ability to enter and leave the unit at will or without permission from the renter. *Id.* He did not ask if she stored property in the rental unit. He did not ask if she had a key to the unit. He did not ask how frequently she visited the unit or if she cooked meals or slept in the unit with any frequency. The officers failed to establish whether the owner "had the shared use and joint access or control over the premises." *State v. Davis*, at 532.

As it was explained by Sargent Barnes, the officers were simply "under the impression that nobody has a [sic] standing to be in the trailer." R. 79 Sargent Barnes further explained that

it was his personal preference to conduct searches without warrants, and that if he could get in without a warrant, he would absolutely prefer not having to get one. R. 34

The officers in this case were not operating under the assumption that the owner of the rental unit had mutual access or joint use to the unit. Both the policy of encouraging thorough police investigation and Utah's stare decisis require that the trial court's decision be reversed.

### **Conclusion**

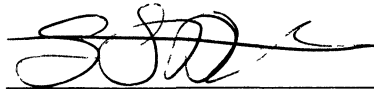
The Utah and United States Constitution provides that citizens are to be protected and maintain and enjoy a sense of security in their homes and persons. Intrusion by the State into this secure area is not permitted without the proper authorization and proof of illegal activity.

Because of the personal nature of the expectation of privacy that exists in these areas, consent is required to be given by those who possess the expectation. A property owner who is not resident or possessor of this expectation is therefore not allowed to give consent to search another person's personal space.

The officers in this case were simply exercising their preference to search without a warrant and hoping that no one in the residence would have the standing to assert their violation of the 4th amendment's protections.

Ms. Bernadette Duran respectfully requests that the Trial Court's ruling denying her motion to suppress be reversed.

DATED this 9 day of August, 2004.

A handwritten signature in black ink, appearing to read 'S. Bailey', written over a horizontal line.

Samuel S. Bailey  
Attorney for the Defendant

**This brief requires no addendum.**

\* \* \* \* \*

**CERTIFICATE OF SERVICE**

I hereby certify that seven (7) copies and one original of the foregoing were Mailed by U.S. First Class Mail, postage prepaid, to the Court of Appeals and that two (2) copies of the foregoing were Mailed by U.S. First Class Mail, postage prepaid, to Office of the Utah Attorney General, Appellate Division at the addresses listed below on this 9<sup>th</sup>, day of August, 2004.

  
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